THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 3rd day of April, 2007

W.P.No.28139 of 1997

Between:

V. Mahidhar … Petitioner

and

Managing Director, A.P. State
Police Housing Corporation
Limited (A State Govt. Undertaking)
Director General of Police Office
Annexe, Saifabad, Hyderabad
and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

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O R D E R :

This Writ Petition is filed seeking a Mandamus declaring the Orders passed by the 1st respondent in his Proceedings No.GN/2062/97-98/3883, dated 18-10-1997 as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India, apart from being contrary to the Service Regulations of the 1st respondent-Corporation and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It appears, petitioner was appointed as an Assistant Engineer with effect from 18-12-1986 in the respondent-Corporation having been subjected to selection by a duly constituted selection committee. His services in the cadre of Assistant Engineer were also confirmed with effect from 5-2-1988. Ever since he has been discharging his duties to the satisfaction of one and all. While so, on 9-4-1996, on medical advise, he applied for leave from 2-4-1996 to 8-5-1996 since he was suffering from backache. Thereafter, he had submitted another application on 10-5-1996 seeking extension of leave upto 8-6-1996. He further sought extension of leave from 10-6-1996 to 31-3-1997. According to the petitioner, he rendered 9 years of continuous service; therefore, he is entitled for leave for a maximum period of one year. On the leave applications filed by the petitioner, the 1st respondent has not passed any orders either rejecting or granting leave. He was under the *bona fide* impression that the same was accepted. While so, the 1st respondent passed an Order dated 1-4-1997 stating that the leave applied for by him was lapsed on 8-6-1996 and he did not report for duty. Further, it is stated that no information has been received and the petitioner thoroughly failed in discharging his

duties causing lot of embarrassment and inconvenience to the Management and thus he was placed under suspension with immediate effect. Thereafter, a charge sheet dated 4-7-1997 was issued and he was asked to attend the enquiry on 15-7-1997 at 11.00 a.m. and submit his defence. Petitioner submitted his explanation and attended the enquiry on 15-7-1996. Thereafter, according to the petitioner, he had not received any notice from the respondents nor the report of the Enquiry Officer. Curiously, the respondent passed an order dated 18-10-1997 terminating his services stating that he is deemed to have been terminated with effect from 3-9-1996, the date upto which he was having leave at his credit, as per Regulations 8 and 9 of the Code, Conduct and Appeal Regulations of the A.P. State Police Housing Corporation Limited (for short 'the Regulations') since he was unauthorizedly absented from duty with effect from 2-4–1996. According to the petitioner, even a temporary employee is entitled for leave upto 120 days continuously, but the respondents instead of granting the leave, have treated it as unauthorized absence without following the due process of law and contrary to the principles of natural justice and terminated his services. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted that the petitioner was appointed purely on temporary basis and his services are terminable without any notice. Petitioner applied for leave for 3 days from 2-4-1996 to 4-4-1996 initially and extended the leave upto 8-5-1996 with Medical Certificate on the ground of low backache. While he was proceeding on leave, did not handover the charge. In spite of notice dated 12-4-1996 also, he did not handover the charge and thereby caused lot of inconvenience to the works. Further, a Telegram dated 14-5-1996 was issued to the petitioner asking him to

report for duty and if not, action will be initiated and a post copy of confirmation letter was also sent to him. In the meanwhile, the petitioner sent another letter dated 10-5-1996 seeking extension of leave from 9-5-1996 to 8-6-1996 on the same ground of backache. This time, he did not enclose any medical certificate. Thereafter, a telegram dated 10-9-1996 was sent to the petitioner asking him to report for duty; even then, he did not report for duty. Thereafter, he did not send any application as stated by him seeking extension of leave upto 31-3-1997. Since there was no response to the said letters and Telegram, the petitioner was suspended from service with effect from 1-4-1997. Thereafter, an Enquiry Officer was appointed and a charge memo was issued. Explanation was called for and the services of the petitioner were terminated, since he created embarrassment and inconvenience to the management.

Sri O. Manohar Reddy, learned counsel for the petitioner, strenuously contended that the impugned termination order passed by the 1st respondent is cryptic and bereft of any reason. Though a farce of enquiry was conducted, the same did not reflect in the termination order. The impugned order seems to have been passed as deemed to be terminated as per Regulations 8 and 9 of the Regulations, since he absented from duty from 2-4-1996. Petitioner having served for more than 9 years was terminated from service without conducting a detailed enquiry into the matter, without following the principles of natural justice and without permitting the petitioner to defend himself properly. Having conducted some enquiry, the respondents even did not depend upon the said enquiry and invoked Regulations 8 and 9 and terminated the services of the petitioner. This Order of the 1st respondent is arbitrary and illegal. Having attributed the misconduct of unauthorized absence and having conducted a farce of enquiry, the 1st respondent did not

depend upon the Enquiry Officer's report and terminated the services of the petitioner.

Sri G. Pedda Babu, learned standing counsel for the respondent-Corporation, strenuously contended that the petitioner was only a temporary employee and he is not entitled for any notice nor he is entitled for leave for more than 120 days. Therefore, his services were terminated by invoking Regulations 8 and 9 of the Regulations. Petitioner, in spite of issuing several notices and telegrams, did not turn up for reporting duty and caused embarrassment and inconvenience to the Corporation and in those circumstances, there was no option for the Corporation except to terminate the services of the petitioner. In fact, an enquiry was conducted and in the enquiry also the charges were proved beyond any reasonable doubt. In view of Regulations 8 and 9 of the Regulations, there is no necessity of issuing any show cause notice also. Respondents are clothed with absolute power to apply the provisions of deemed termination and got rid of the employee, who caused embarrassment and inconvenience by overstaying the leave for more than 120 days for which he is not entitled to. Therefore, the impugned Order cannot be termed as arbitrary, illegal or violative of principles of natural justice.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

The facts, as noticed above, are not in dispute. The petitioner was suspended from service and a charge sheet was also issued. Petitioner offered his explanation, but the Enquiry Officer seems to have submitted a report holding the petitioner guilty of the charges. Neither a copy of the Enquiry Officer's report was furnished to the petitioner nor any steps were taken in furtherance of the report of the Enquiry Officer i.e.

issuance of show cause notice etc. Instead of that, the 1st respondent, in the guise of Regulations 8 and 9, invoked deemed termination and passed the impugned Order. It is unfortunate that even before invoking Regulations 8 and 9, no show cause notice of any kind was issued to the petitioner. Firstly, having suspended the petitioner, issued a charge memo dated 4-7-1997 and also having conducted an enquiry into the matter as per the Regulations, no final proceedings were issued. Secondly, no show cause notice of any kind was issued while invoking Regulations 8 and 9. This practice of invoking deemed termination by the authorities has been deprecated by the Supreme Court in catena of decisions; one such being **L. ROBERT D. SOUZA v. EXECUTIVE ENGINEER, SOUTHERN RAILWAY**[1] wherein it was held as under:

> "7…….. Therefore, we adopt as binding the well settled position in law that if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i. e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2 (oo). It must as a corollary follow that if the name of the workman is struck. off the roll that itself would constitute retrenchment, as held by this Court in Delhi Cloth and General Mills Ltd. case (AIR 1978 SC 8). We specifically refer to this case because the facts in the case before us are on all fours with the facts in the aforementioned cases and on parity of reasoning and judicial comity the same conclusion must follow unless something to the contrary is indicated……..."

The said decision of the Apex Court was followed by a Division Bench

of this Court in **MOHD.ABDUL KHADAR v. APSRTC**[2] and held that the termination of the services of a workman for overstay on expiry of leave amounts to retrenchment, since neither the requirements of Sec.25-F of the Act have been fulfilled by the Management nor any enquiry whatsoever was held to justify the action of the termination on the ground of misconduct. In the said case, APSRTC had invoked Regulation 39(3) of the Andhra Pradesh State Road Transport Corporation Employees' (Leave) Regulations,1963, which contemplates deemed resignation of an employee, who overstayed the leave. The Regulation 39(3) reads as under:

> "39(3) A non-permanent employee, who remains absent for a period exceeding the maximum period for which extra-ordinary leave may be granted under this Regulation, shall be deemed to have resigned his appointment and cease to be in service"

In this connection, it is also relevant to refer to Regulations 8 and 9, which read as under:

> "8.ATTENDANCE:
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> i) Save under circumstances beyond his control, of which he is required to furnish explanation to the satisfaction of the authority competent to grant him leave, no employee may absent himself from duty without obtaining prior permission or overstay his leave, unless it has been extended
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> ii) Every employee shall be at work punctually at the time fixed and notified in that behalf by the Managing Director unless permitted to do otherwise by his immediate superior officer.
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> iii) No employee shall after reporting for work be found absent from his proper place of work during the period of work assigned to him without obtaining the permission of his immediate superior officer.
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> 9. ABSENCE FROM HEAD QUARTERS:
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> No employee shall absent himself from his head quarters except on duty without obtaining prior permission of the Head of the Office or Managing Director or Secretary or Superintending Engineer as the

case may be. If the employee himself is the head of the office he shall not, save in exceptional circumstances, leave his headquarters without prior permission of his immediate superior officer. However, when an employee is on leave or is enjoying a holiday, he shall leave the headquarters only after intimation to the Head of the Office."

Though the respondents invoked the said Regulations 8 and 9, they do not contemplate deemed termination. However, from the record produced by the respondents, it is seen that the disciplinary authority had invoked Rule 6 of A.P. Leave Rules,1933, which reads as under:

"6. Subject to the restrictions in Rule 15-B (iii) and 18-B(iii) any kind of leave admissible under these rules may be granted in combination with any other kind of leave so admissible, or in continuation of leave already taken, whether of the same or of any other kind.

A. In the case of Government servants governed by the A.P. Leave Rules,1933, who remain absent after the end of his leave, the period of such overstayal of leave should, unless the leave is extended by the competent authority, be treated as follows:

a) If the Officer is in superior service, -

(i) as leave (on half pay) on private affairs to the extent such leave is due, unless the overstayal is supported by medical certificate;

(ii) as leave (on half-pay) on medical certificate to the extent such leave is due, if the overstayal is supported by a medical certificate.

(iii) as extraordinary leave to the extent the period of leave due (on half-pay) on private affairs and/or on medical certificate falls short of the period of overstayal.

B. If the Officer is in last grade service as in (a) (i) to (iii) above *mutatis mutandis* the Government servant is not entitled to leave salary during over such overstayal of leave not covered by an extension of leave by the competent authority.

Note: A temporary Government servant working under emergency provisions, who remain absent from duty after applying for leave or

> extension of leave to which he is not entitled to under the rules, shall be deemed to have been discharged from duty with effect from the date from which he is not entitled to any leave, unless the leave applied for is granted by Government in relaxation of the relevant rules."

The above Rule is akin to that of APSRT Employees' (Leave) Regulations,1963. Therefore, the impugned Order of termination is arbitrary, illegal and in gross violation of principles of natural justice. Assuming that the petitioner is only a temporary employee, that does not mean that his services can be terminated after 9 long years, without putting him on notice and calling for his explanation, by invoking Regulations 8 and 9 of the Regulations read with Rule 6 of A.P. Leave Rules. Looking from any angle, the impugned Order does not stand the scrutiny of law. Neither it satisfies the principles of natural justice nor it is in accordance with the Judgment of the Supreme Court noted above. Therefore, impugned Order dated 18-10-1997 of the 1st respondent is in gross violation of principles of natural justice and also contrary to the principles laid down by the Supreme Court in the said Judgment. Thus, the impugned Order is liable to be set aside and is accordingly set aside.

During the course of hearing, when the learned counsel for the 1st respondent was asked to obtain instructions as to whether the 1st respondent is ready to reinstate the petitioner without any back wages, the learned counsel, on instructions, stated that the 1st respondent is not willing to do so, though the petitioner accepted for such a proposal.

In a case of this nature, generally the matter requires to be remanded for reconsideration. Since it is more than 10 years now and the petitioner has not disputed as to his absence, except saying, he overstayed the leave and he is entitled for sanction of leave for one year

as he was not a temporary employee, it is desirable to give a quietus to the matter here itself, in this proceedings. The absence from duty is a matter of record and the facts are not in dispute. Therefore, I deem it appropriate to direct the respondents to reinstate the petitioner with continuity of service, with all attendant benefits, but without any back wages for the period from the date of his termination till the date of reinstatement.

The Writ Petition is allowed and the respondents are directed to reinstate the petitioner forthwith. No order as to costs.

03-4-2007

prk

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[1] AIR 1982 SC 854

[2] 1983(2) ALT 301